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## LEARNED HAND

1872—1961

THE SPIRIT OF LIBERTY, Learned Hand once said, is “the spirit which is not too sure that it is right.” All of Judge Hand’s great technical abilities—abilities which rank him with the foremost craftsmen of our legal tradition—were joined with this spirit. He was fond of recalling Cromwell’s statement, “I beseech ye in the bowels of Christ, think that ye may be mistaken.” He told a Senate committee, “I should like to have that written over the portals of every church, every school, and every court house, and, may I say, of every legislative body in the United States. I should like to have every court begin, ‘I beseech ye in the bowels of Christ, think that we may be mistaken.’”

Perhaps more than any other judge, Learned Hand was aware that a man may be mistaken. “In the beginning was the Guess,” he quoted Bernard Berenson as saying. And he added, “In the beginning and at the ending let us be content with the ‘Guess’.” His secret moments were never free from the knowledge that the infinite mystery of life makes guessers of us all. It was the burden of this knowledge which led Judge Hand to an austere, self-effacing concept of judicial review. If errors of judgment, of assessment, of selection among values must be made in a democratic society, he counseled, better they be made by the people than by the courts. “I often wonder,” he said, “whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.” Learned Hand knew that a free people could keep alive this liberty only by undergoing the fortifying discipline of choosing for themselves the quality and tenor and level of tolerance of the society in which they live—and, as important, of bearing the ultimate responsibility for their choices.

Keats said of Shakespeare that he lived a life of allegory. One day men may say the same of Learned Hand. His life was a gallant struggle toward the limited truths that man can know. “In the universe of truth,” he said in praise of his former law professors, “they lived by the sword; they asked no quarter of absolutes and they gave none.” Learned Hand insisted that every man undertake for himself that struggle for truth. And he viewed democracy as a society in which every generation must affirm its commitment to freedom by undertaking that same struggle anew. What he said of another we may say of him: “Shall we not take heart, so far as may lie in us, to pattern ourselves after his pure spirit and make its image our heritage: our possession for all time?”